

# Case of the Month: The Gun Tragedy

## Case Cause no 83,144- W. F. Tobias v. Richard Rogers

Judge Mark Davidson



**Downtown Houston near the turn of the last century**

What was happening at the Harris County Courthouse one hundred years ago this month? Here is the case that everyone was following: Most of us have seen Western movies in which cowboys twirled a gun around their finger to show their dexterity at handling weapons. Rare is the Western in which a gun went off while it was being twirled. A case was tried in the 55th District Court before Judge Ewing Boyd in November of 1919 in which just such an accident occurred. It resulted in the death of a ten year old child – a tragedy by any definition.

Charles Tobias was a newsboy for the Houston Post Dispatch. He regularly went into in Wood's Hotel in Downtown Houston and was shot there on March 12, 1919. The hotel was on Travis Street at its intersection with Preston, and was two blocks from the Houston Post Building. The young man would bring "special editions" of the paper into hotel to sell to the patrons of the hotel. Testimony at the trial was that he made between ten and fifteen dollars a month from selling newspapers. Robert Richter was a permanent resident of the hotel. He asked the desk clerk, Mr. A. C. Lowery, to watch his gun, a Colt 34 double action, for him for ten minutes.

After the owner of the gun left, Lowery decided to show his gun skills by twirling the gun around his finger. Unknown to him the gun was loaded, but not locked. It went off, killing the newsboy. The lawsuit was filed in April of 1919 by A. B. Wilson, the attorney for W. F. Tobias - the boy's father. The hotel was defended by John Mobley of the firm of Andrews, Streetman, Logue, and Mobley.

## Case of the Month, Cont.



**Antique advertisement for Colt pistols**

The principal issue at trial was only secondarily whether Mr. Lowery was negligent in rotating a loaded gun in a hotel reception room. The case tried to the jury was whether Lowery was acting in the course and scope of the hotel's business. The hotel argued that they never told him to play with the customer's guns, and that he was therefore acting outside of his authority. To the hotel, this made a big difference, since a judgment against a twenty-year-old itinerant desk clerk would have been of no value. The key witness was a jewelry salesman and former actor known as Professor Oofy Goofy, who testified that neither the owner of the hotel - Richard Rogers - nor the manager of the hotel - James Wooldridge - was on the premises at the time of the shooting.

The jury ruled that Lowery was acting in the course and scope of his employment and the hotel was responsible for the damages caused by the desk clerk. The jury determined damages next, and awarded \$4000.00, or about \$55,000.00 in 2019 dollars. Today, that number seems shockingly low until you realize that the law at the time prohibited parents from recovering mental pain or anguish for the death of their child. Recovery was limited to a dead child's economic contribution to the family, less the cost of raising the child.

Recognizing this, Wilson had only plead for \$15,000.00 of damages. A notice of appeal was given, but there is no record that it was ever perfected to the Galveston Court of Appeals. A final observation about this case: The death took place in March. The case was filed in April. The parties did all of their discovery in May and July. The case was tried in November. That is a monument to the judicial system of a century ago, and to Judge Ewing Boyd, who was new to the bench in 1919. He would serve until 1958.